

USAID Contracting Policies

HEARING

before the

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

Wednesday, February 25, 2004

Time: 3:30 PM

Place: 419 Dirksen Senate Office Building

Presiding: Senator Hagel

Witnesses:

Panel 1

- The Honorable Everett L. Mosley
Inspector General
United States Agency for International Development
Washington, DC
- Mr. Tim Beans
Director
Office of Procurement
United States Agency for International Development
Washington, DC

Panel 2

- Mr. Frederick D. Barton
Co-Director of Post Conflict Reconstruction Programs
Center for Strategic and International Studies
Washington, DC
- Dr. Allan V. Burman
President
Jefferson Solutions
Washington, DC
- Mr. Marcus L. Stevenson
Director of Grants and Contracts
The Urban Institute
Washington, DC

STATEMENT OF EVERETT L. MOSLEY

INSPECTOR GENERAL
U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT

SUBMITTED TO THE SUBCOMMITTEE ON INTERNATIONAL
ECONOMIC POLICY, EXPORT AND TRADE PROMOTION OF THE
SENATE FOREIGN RELATIONS COMMITTEE

REGARDING U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT
CONTRACTING PRACTICES

FEBRUARY 25, 2004

MR. CHAIRMAN, OTHER COMMITTEE MEMBERS, AND COMMITTEE STAFF,
THANK YOU FOR THE OPPORTUNITY TO PROVIDE TESTIMONY ON THE U.S.
AGENCY FOR INTERNATIONAL DEVELOPMENT'S (USAID'S) CONTRACTING
PRACTICES. AS YOU HAVE REQUESTED, MY TESTIMONY WILL FOCUS ON
USAID'S CONTRACTING PROCESSES, WITH EMPHASIS ON PROGRAMS IN
AFGHANISTAN AND IRAQ.

MY OFFICE HAS A CONTINUING PROGRAM TO REVIEW USAID'S PROCUREMENT
OPERATIONS. THESE REVIEWS CONSIST OF PRE-AWARD AUDITS, INCURRED
COST AUDITS, AND CONTRACT CLOSE-OUT AUDITS THAT ARE PERFORMED BY
MY STAFF, BY CONTRACTED PUBLIC ACCOUNTING FIRMS, AND BY THE
DEFENSE CONTRACT AUDIT AGENCY THROUGH A REIMBURSABLE AGREEMENT
WITH MY OFFICE. IN ADDITION, WE HAVE CONDUCTED A SERIES OF
AUDITS TO EXAMINE WHETHER USAID'S COGNIZANT TECHNICAL OFFICERS
ARE PROPERLY TRAINED AND ACCOUNTABLE FOR PERFORMING THEIR
DUTIES. COGNIZANT TECHNICAL OFFICERS PLAY A CRUCIAL ROLE IN
HELPING ENSURE THAT CONTRACTORS DELIVER THE GOODS AND SERVICES
CONTRACTED FOR.

COGNIZANT TECHNICAL OFFICERS

TO DATE, WE HAVE COMPLETED WORK IN THREE USAID BUREAUS IN
WASHINGTON AND SIX USAID MISSIONS OVERSEAS. WHILE WE HAVE NOT
YET REACHED OVERALL CONCLUSIONS, AUDIT WORK TO DATE INDICATES
THAT MANY COGNIZANT TECHNICAL OFFICERS ARE NOT ADEQUATELY
TRAINED TO PERFORM COGNIZANT TECHNICAL OFFICER DUTIES. WE ARE
IN THE PROCESS OF FINALIZING OUR SUMMARY AUDIT REPORT TO USAID
WHICH INCLUDES RECOMMENDATIONS TO ENSURE THAT (1) CTOS RECEIVE
SPECIFIC TRAINING ON A TIMELY BASIS TO BECOME ELIGIBLE FOR
CERTIFICATION, AND (2) CTO ACCOUNTABILITY IS IMPROVED BY
INCLUDING THEIR RESPONSIBILITIES IN THEIR WORK OBJECTIVES.

AFGHANISTAN

IN RESPONSE TO A REQUEST FOR ASSISTANCE FROM USAID'S ADMINISTRATOR, MY OFFICE HAS PROVIDED ADVICE ON ACCOUNTABILITY AND AUDIT ISSUES FOR THE AFGHANISTAN ASSISTANCE PROGRAM. FOR EXAMPLE, OIG REPRESENTATIVES SERVED AS OBSERVERS AT MEETINGS OF THE CENTRAL ASIAN TASK FORCE ESTABLISHED PRIOR TO THE OPENING OF THE USAID MISSION IN AFGHANISTAN TO PLAN ASSISTANCE ACTIVITIES. ADDITIONALLY, PRIOR TO THE AWARDING OF THE MAJOR CONTRACT FOR THE REHABILITATION OF ECONOMIC FACILITIES AND SERVICES PROGRAM IN AFGHANISTAN, USAID'S BUREAU FOR ASIA AND THE NEAR EAST REQUESTED THE OIG'S COOPERATION IN IDENTIFYING APPROPRIATE AUDIT COVERAGE OF THE CONTRACT. SHORTLY AFTER THE CONTRACT WAS AWARDED, MY STAFF VISITED KABUL TO PERFORM A PRELIMINARY RISK ASSESSMENT OF THE USAID PROGRAM AND DEVELOP AN AUDIT STRATEGY.

THE AUDIT STRATEGY INCLUDES A CONCURRENT FINANCIAL AUDIT PROGRAM AS WELL AS PERFORMANCE AUDITS. A SERIES OF CONCURRENT FINANCIAL AUDITS ARE PLANNED OF COSTS INCURRED UNDER THE USAID/AFGHANISTAN REHABILITATION OF ECONOMIC FACILITIES AND SERVICES PROGRAM. THESE CONCURRENT FINANCIAL AUDITS ARE DESIGNED TO DISCLOSE ACCOUNTABILITY ISSUES AT AN EARLY STAGE, BEFORE LARGER SUMS OF MONEY ARE PUT AT RISK. THESE AUDITS ARE CONDUCTED BY A PUBLIC ACCOUNTING FIRMS AND THE DEFENSE CONTRACT AUDIT AGENCY. THE AUDITS IN AFGHANISTAN ARE SUPERVISED CLOSELY BY MY OFFICE TO ENSURE AUDIT QUALITY. THE FIRST OF THESE FINANCIAL AUDITS, ISSUED ON JANUARY 23, 2004, COVERED ABOUT \$1.2 MILLION IN LOCAL COSTS PAID IN AFGHANISTAN OF WHICH ABOUT \$29,000 WAS QUESTIONED BY THE AUDITORS.

MY OFFICE HAS ALSO ISSUED A REPORT ON THE PROGRESS OF THE KABUL-KANDAHAR HIGHWAY REHABILITATION. THE REPORT DESCRIBED BOTH SUCCESSES AND CHALLENGES THAT HAD CAUSED PROJECT DELAYS. AS OF NOVEMBER 1, 2003, LOUIS BERGER PROGRESS REPORTS SHOWED THAT 222 KILOMETERS OF THE 389 KILOMETER ROAD PROJECT HAD BEEN PAVED AND USAID OFFICIALS STATED THAT THEY PLANNED TO HAVE THE ENTIRE 389 KILOMETERS OF ROAD COMPLETED WITH AN ACCEPTABLE INTERIM PAVED SURFACE BY THE END OF DECEMBER 2003. USAID SUBSEQUENTLY REPORTED THAT THIS WAS ACHIEVED. OUR REPORT ALSO NOTED THAT LOUIS BERGER HAD NOT UPDATED ITS IMPLEMENTATION PLAN REQUIRED UNDER THE CONTRACT TO REFLECT CHANGES MADE TO THE ROAD RECONSTRUCTION SCHEDULE. THEREFORE, WE RECOMMENDED THAT USAID REQUIRE LOUIS BERGER TO MAINTAIN AN UPDATED IMPLEMENTATION PLAN FOR ITS ACTIVITIES UNDER THE CONTRACT.

IRAQ

OUR WORK ON CONTRACTING IN SUPPORT OF THE IRAQ PROGRAM IS BEING CONDUCTED IN THREE PHASES: (1) EXAMINING THE DECISION TO USE LESS THAN FULL AND OPEN COMPETITION FOR NINE CONTRACTS, (2) EXAMINING COMPLIANCE WITH THE FEDERAL ACQUISITION REGULATIONS IN AWARDED CONTRACTS, AND (3) CONDUCTING CONCURRENT FINANCIAL AUDITS AND PERFORMANCE AUDITS OF THE PROGRAM.

USAID HAS USED LESS THAN FULL AND OPEN COMPETITION IN AWARDED NINE OF ELEVEN CONTRACTS AWARDED TO DATE. SUBPART 6.3 OF THE FEDERAL ACQUISITION REGULATIONS AND SECTION 706.302 OF THE USAID ACQUISITION REGULATIONS ALLOW USE OF LESS THAN FULL AND OPEN COMPETITION WHEN THE USAID ADMINISTRATOR MAKES A WRITTEN DETERMINATION THAT USE OF FULL AND OPEN COMPETITION WOULD BE INCONSISTENT WITH THE FULFILLMENT OF THE FOREIGN ASSISTANCE PROGRAM. THE OFFICE OF THE USAID ADMINISTRATOR MADE THIS DETERMINATION IN WRITING ON JANUARY 16, 2003. THE OIG ADVISED THE RANKING MEMBER OF THE SENATE COMMITTEE ON GOVERNMENTAL AFFAIRS OF THIS DETERMINATION IN A LETTER DATED APRIL 14, 2003.

TO DATE, USAID HAS AWARDED ELEVEN RECONSTRUCTION CONTRACTS TOTALING \$3.3 BILLION. THESE CONTRACTS RELATE TO ECONOMIC GOVERNANCE, EDUCATION, INFRASTRUCTURE RECONSTRUCTION, PERSONNEL SUPPORT, SEAPORT ADMINISTRATION, LOCAL GOVERNANCE, MONITORING AND EVALUATION, HEALTH, AIRPORT ADMINISTRATION AND AGRICULTURE.

TO DATE, MY OFFICE HAS REVIEWED TEN OF THESE CONTRACTS WITH A VALUE OF \$1.5 BILLION. WE HAVE ISSUED NINE FINAL MEMORANDUMS ON THESE REVIEWS AND A TENTH MEMORANDUM IS IN DRAFT AT THIS TIME. WE PLAN TO REVIEW ADDITIONAL CONTRACTS AS THEY ARE AWARDED DURING THE REMAINDER OF FY 2004.

THESE REVIEWS INDICATE THAT USAID HAS DONE A GOOD JOB OF PROCESSING THESE AWARDS UNDER TIGHT TIMEFRAMES TO SUPPORT THE RECONSTRUCTION PROGRAM IN IRAQ. BASED ON THE REVIEWS COMPLETED TO DATE, MY OFFICE CONCLUDED THAT USAID COMPLIED WITH THE ACQUISITION REGULATIONS APPLICABLE TO THESE CONTRACTS WITH THE FOLLOWING EXCEPTIONS:

- FOR THREE CONTRACTS, THE AUDITORS NOTED WEAKNESSES IN USAID'S DOCUMENTATION OF ITS MARKET RESEARCH EFFORTS TO IDENTIFY PROSPECTIVE CONTRACTORS.
- FOR ONE CONTRACT, USAID STAFF SHOULD HAVE CONSULTED WITH ITS OFFICE OF GENERAL COUNSEL ON A POTENTIAL CONFLICT OF INTEREST ISSUE.

- FOR ONE CONTRACT, USAID DID NOT PROVIDE ONE OFFEROR WITH TIMELY NOTIFICATION THAT AN AWARD HAD BEEN MADE AND DID NOT PROVIDE TIMELY DEBRIEFINGS TO THREE UNSUCCESSFUL OFFERORS.

IN ADDITION TO THESE INSTANCES OF NON-COMPLIANCE WITH ACQUISITION REGULATIONS, MY OFFICE IDENTIFIED SOME OTHER AREAS WHERE CONTRACTING PRACTICES MIGHT BE IMPROVED:

- FOR TWO CONTRACTS, WE CONCLUDED THAT USAID SHOULD FULLY DOCUMENT WHAT IS DISCUSSED IN PRE-SOLICITATION MEETINGS WITH POTENTIAL OFFERORS.
- FOR TWO CONTRACTS, THE LEVEL OF EFFORT INITIALLY ESTIMATED BY USAID VARIED SIGNIFICANTLY FROM ACTUAL NEEDS.
- FOR TWO CONTRACTS, USAID INITIALLY DETERMINED THAT CONTRACTORS WOULD NEED A FACILITIES CLEARANCE AND ACCORDINGLY INCLUDED THIS REQUIREMENT IN THE REQUEST FOR PROPOSALS. AFTER IT FOUND THAT THE SELECTED CONTRACTORS DID NOT HAVE THE REQUISITE FACILITIES CLEARANCES, USAID DELETED THE REQUIREMENT.
- FOR ONE CONTRACT, WHERE A REQUEST FOR PROPOSAL DID NOT REQUIRE THAT OFFERORS PROVIDE EVIDENCE OF THEIR LEGAL STATUS, THE SELECTED OFFEROR'S STATUS AS A CORPORATION HAD LAPSED. HOWEVER, THE OFFEROR BECAME AWARE OF THIS PROBLEM AND CORRECTED IT PRIOR TO SIGNING THE CONTRACT WITH USAID.

IN ADDITION TO THIS WORK WHICH FOCUSED ON CONTRACTING PROCESSES ASSOCIATED WITH THE IRAQ PROGRAM, MY OFFICE HAS ALSO CONDUCTED FINANCIAL AND PERFORMANCE AUDITS IN IRAQ ITSELF.

SPECIFICALLY, WE HAVE INITIATED 33 FINANCIAL AUDITS COVERING COSTS INCURRED BY CONTRACTORS IMPLEMENTING THE USAID PROGRAM TO REBUILD IRAQ. THESE AUDITS ARE BEING PERFORMED BY DEFENSE CONTRACT AUDIT AGENCY AUDITORS LOCATED IN BAGHDAD AND KUWAIT CITY AND IN DCAA REGIONAL OFFICES IN THE U.S. THE AUDITS WILL EXAMINE THE PROPRIETY OF COSTS INCURRED UNDER THESE CONTRACTS AND THE CONTRACTORS' INTERNAL CONTROL SYSTEMS. THE OIG WILL REVIEW AND ISSUE FINAL REPORTS TO USAID TO ENSURE THAT USAID COLLECTS ANY QUESTIONED COSTS DUE TO USAID AND TAKES ACTION ON ANY IDENTIFIED MANAGEMENT AND FINANCIAL SYSTEM WEAKNESSES. TO DATE, WE HAVE ISSUED 22 AUDIT REPORTS COVERING ABOUT \$35 MILLION IN USAID FUNDS. THE AUDITORS QUESTIONED \$339,646, WHICH INCLUDED \$275,772 IN INELIGIBLE COSTS AND \$63,874 IN UNSUPPORTED COSTS.

IN ADDITION, WE HAVE CONDUCTED ONE PERFORMANCE AUDIT THAT EXAMINED THE ACCURACY OF RESULTS DATA COMPILED BY USAID FOR ITS EDUCATION ACTIVITIES IN IRAQ. MY STAFF IS DRAFTING A REPORT ON THE RESULTS OF THAT AUDIT NOW. WE WILL CONDUCT ADDITIONAL PERFORMANCE AUDITS IN IRAQ DURING FISCAL YEAR 2004.

PROACTIVE INVESTIGATIVE WORK WILL INCLUDE CONTINUAL REVIEW AND ASSESSMENT OF CONTRACTS AND CONTRACT FILES TO DETERMINE AREAS OF POTENTIAL VULNERABILITY. IN ADDITION, CONTACTS WITH KEY PERSONNEL INVOLVED WITH THE EFFORT HAVE BEEN INITIATED. THE OIG WILL INVESTIGATE ANY ALLEGATIONS OF WRONGDOING IN THE IRAQ PROGRAM.

AGAIN, THANK YOU FOR THE OPPORTUNITY TO TESTIFY TODAY. I WILL BE HAPPY TO RESPOND TO ANY QUESTIONS YOU MAY HAVE.

**Testimony of Mr. Timothy Beans
Chief Acquisition Officer
Office of Procurement
United States Agency for International Development
before the
Committee on Foreign Relations
Subcommittee on International Economic Policy,
Export and Trade Promotion
United States Senate**

February 25, 2004

Mr. Chairman and Members of the Committee, thank you for the opportunity to provide testimony on the U.S. Agency for International Development's (USAID) contracting policies. As you have requested, my testimony will focus on USAID's contracting processes, with emphasis on programs in Afghanistan and Iraq. I will address the specific challenges, the lessons learned, and the policies and procedures that assure transparency and accountability.

USAID's purchase of goods and services are done under the authority of the Foreign Assistance Act. The Foreign Assistance Act mandates, as a rule, a preference for American firms to carry out U.S. foreign aid programs.

Under the initial Emergency War-time Supplemental in FY 2003, I am very proud to note that my office obligated approximately \$2.1 billion of the \$2.5 billion appropriated for the Iraq Relief and Reconstruction Fund in support of U.S. efforts to rebuild Iraq after the war.

During this initial period, we awarded contracts for personnel support, airports, seaports, reconstruction, education, health, local governance, economic growth and agriculture. Based on the need to act quickly following the end of active hostilities, we chose to do a limited competition for most of the initial awards. Although the vast majority of USAID's procurements are conducted using fully competitive procedures, the federal acquisition regulations grant the Administrator the authority to waive normal contracting procedures by making a written determination "that compliance with full and open competitive procedures would impair foreign assistance

objectives, and would be inconsistent with the fulfillment of foreign assistance programs."

Under the second Iraq supplemental, USAID was the first agency to make an award in support of the continuing efforts in Iraq, with a \$1.8 billion contract to Bechtel for infrastructure support utilizing full and open competition. The award was made under ideal contracting circumstances in that the highest technical scored proposal also was the lowest cost proposal submitted.

While we are very proud of our efforts in supporting U.S. goals in Iraq and Afghanistan, these efforts have not been accomplished without some difficulties. The urgency of these actions made for difficult and challenging circumstances. We have been very creative in trying to meet the shortage of personnel that would normally be needed for this large an undertaking. However, a review of the numerous audits performed by our Inspector General's (IG) Office will show that we followed federal procurement rules and regulations in the award of these contracts, with minor exceptions. The IG audit report also pointed out things we could have done better to strengthen our procurements, particularly in the area of additional documentation. Many of the suggestions have already been implemented. We have a good working relationship with the Office of Inspector General and will continue to work closely with this office to ensure compliance with all relevant regulations.

As director of the Office of Procurement, one of my major goals is to make sure we are as open and transparent as possible in our procurement process. We have made very serious efforts to be as transparent as possible by making available virtually everything we legally can on our web site. Steven L. Schooner, Associate Professor of Law at George Washington University Law School, recently wrote at a Government Contracts Year in Review conference that USAID "...has endeavored (for the most part successfully) to provide information relating to its contracting activities on its web page." He goes on to say that, "...I believe that USAID has set a new standard for transparency in public procurement."

This is exactly the kind of open and transparent agency we are striving to be. We will continue to expand our efforts to meet the very high standard we have set for ourselves.

Given the large increases in our budget with Iraq and Afghanistan and beginning in FY 2004, we have gone from an annual obligation of just over \$6 billion in 2001 to approximately \$12 billion in 2003. While we have been very successful in making the critical awards, we are also doing everything we can to assure that the taxpayers of this country are receiving value for their expenditures. This includes moving U.S. direct-hire staff to Iraq to oversee the contracts as well as hiring senior contracting talent to help administer these awards. We are also requesting support from the IG's office and audit support from the Defense Contract Audit Agency to make sure that funds are being spent appropriately and accounted for properly. As such, this is an area that we will want to monitor very closely over the coming months and years.

You will note I spoke more to the Iraq contracts than I did the Afghanistan contracts. The reason for this is that we negotiated the Iraq contracts here in Washington, and then sent them over to Iraq for administration. Afghanistan is a stand-alone mission and has its own contracting staff, so the awards in support of Afghanistan have been run from the USAID mission in Kabul. As a result, we here in Washington are much more familiar with the Iraq actions than we are the Afghanistan procurements.

Mr. Chairman, I would be pleased to answer any questions you and the Committee members may have.

TESTIMONY OF FREDERICK D. BARTON

**SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, EXPORT
AND TRADE PROMOTION**

SENATE FOREIGN RELATIONS COMMITTEE

FEBRUARY 25, 2004

USAID CONTRACTING POLICIES

Senator Hagel and Senator Sarbanes, thank you for the invitation to address this important issue. The acquisition and assistance policies of USAID have a direct impact on trust in government, the effectiveness of the Agency's work, decisions of its employees and its private and non-profit partners, and on its future ability to provide global leadership.

Over the past few decades there have been dozens of internal reform studies, most of which were disregarded. It is my understanding that Andrew Natsios, Tim Beans and their team are making real progress. Certainly USAID's speed and responsiveness in the Iraq and Afghanistan crises are commendable. Other significant steps include the use of the Internet and greater transparency, training of people throughout the Agency, and most importantly an open and responsive way of dealing with others.

My intent is to point out three policy suggestions with specific steps that should be considered, and where possible, cite examples from Iraq and Afghanistan. Post conflict reconstruction work requires a clear sense of direction, sensitivity to scale and context, catalytic and tangible progress, speed and agility, and the full engagement of local people. It is a good, tough testing ground for innovative approaches and practices.

The three policy recommendations for USAID are:

1) Expand the range of choices and partners. The challenges are already too great to be handled by a few. As we approach ever-larger transitions, it is imperative that we find ways to improve the preparation for this sensitive work, the number of organizations to partner with, and the speed to the market. This could be done in the following ways:

- *Pre-compete and pre-qualify a large pool of organizations (private and non-profit) with a special emphasis on difficult subject areas* such as: public safety and justice teams, demobilization and reintegration of combatants, and mass communications. The SWIFT mechanism in OTI is a good example and allowed for 4-5 week conceptualization to implementation in Iraq.
- *Develop a hybrid experiment, somewhere between a contract, a cooperative agreement and a grant.* This new instrument should define a job, challenge the market to respond and allow a range of private and PVO competitors. The debate between control and collaboration needs to be redefined. Some of the

natural advantages that NGOs offered in Afghanistan, including existing knowledge, field staffs, and the ability to leverage other funds, were lost because of the absence of this kind of choice.

- *Consider the direct use of foreign firms in order to broaden the pool of talent and skills.* Foreign subcontractors did most of the work on the Kabul to Kandahar road project in Afghanistan. In both Iraq and Afghanistan, it has been difficult to staff operations or keep people, witness the 58% fulfillment rate at CPA headquarters in Baghdad.
- *Beware the use of large contracts.* While they seem to offer the convenience of one-stop-shopping, single, large contracts are not necessarily quicker in the field, lead to greater cost overruns, and reduce competition. Some of the Iraq RFPs were larger than the annual gross revenues of many would-be bidders. That produced a consolidation for bidding that eliminated any competition. If the contracting was less arduous, the work could have more easily been broken into geographic zones or other more digestible pieces, and enlarged the market place. In Afghanistan there are only a handful of contractors.

2) Open up the process. USAID and the work it is trying to do is ill served by secrecy, closed meetings, and excessive security. As the US prepared for the war in Iraq and tens of thousands of soldiers were visibly sent to the region, most post combat planning was kept secret- as if it might tip off war plans. Administration policy delayed preparations, such as contracts and grants, and information was not shared. The results harmed the eventual programs and projects and built distrust. Several steps would help in the future:

- *Resist the temptation to classify.* Bringing assistance to a nation should always be seen as an act of public friendship. If the program does not pass that test, it is in the wrong place. I have not heard of any USAID initiative in Iraq or Afghanistan that benefited from this approach.
- *Expand the use of concurrent audits, spot checks and peer reviews of ongoing work.* These audits, that take place during the operation of a program, are helpful to program managers and USAID partners by reporting on performance, management problems, and the appropriateness of a contract. As such, they allow midcourse corrections. Their use on mega projects, such as the Afghan road building, has been positive.
- *Encourage the development of an entrepreneurial class of people at USAID and reward wise risk taking.* The skill sets that are needed in Afghanistan and Iraq are creativity, flexibility, and proximity to the people. As the US military has shown with their civil affairs and “hearts and minds” work, it is necessary to be able to make small things happen on a regular basis. Congress should encourage the use of waivers and special authorities within USAID, streamline reporting, and avoid excessive criticism to advance this difficult cultural change. Mission Directors in emergency places should be able to invoke the same rules as the Office of Foreign Disaster Assistance for those parts of the USAID program that could have a direct benefit on the situation. For its part, USAID should be less defensive about its shortcomings.

- *Put together a simple study of harmful earmarks and restrictions.* There is a chronic complaint within USAID about this issue. A five-page memo detailing 10-25 earmarks, with a paragraph explaining their effect on operations should be prepared for this Subcommittee.
- *Make clear the difficulty of working in the new security environment.* In Iraq, we visited with dedicated USAID employees and partners who were operating in dangerous settings. Many who work in Afghanistan feel that conditions have grown more dangerous, with work in the South slowing down into a shrinking area. While others have the responsibility for public safety, it is the central challenge of both places and has a huge impact on costs, meeting deadlines, and the ability to recruit the necessary talent.

3) Make the system easier to use. Tim Beans and his team are making real progress, yet there are more opportunities to address this chronic problem. USAID is not the Department of Defense and would benefit from an assistance and acquisition approach that has its own identity. Program people need to be freed up to do the work, as opposed to managing paperwork or making decisions based on the difficulty of contractual implementation. The following improvements would help:

- *Decentralize most work and place contract officers in each bureau and office.* Where these people have been co-located, they are part of a team and enjoy greater job satisfaction. This is how Missions and some offices with a need to be responsive work- it should be replicated.
- *Encourage the Beans initiative to develop a cadre of Foreign Service contracting officers.* Connecting contracting officials to the Agency's work, where they can enjoy the same rewards and incentives of their USAID colleagues, is an excellent way to address high turnover rates.
- *Empower more people with decision-making authority and responsibility by increasing the use of purchasing warrants to Office and Mission directors.* There was a time when the authority to approve up to \$1 million existed- that should be returned and increased, once a brief training module is completed. Recent delegations of Personal Services Contractor (PSC) authorities, small grants and purchase orders are an important step in the right direction.
- *Expand the standby pool of talent.* Offices that have developed "bullpens" of people who are ready to go in an emergency are among the most responsive in the Agency. That needs to be expanded by building rosters of capable people who have received security clearances and have pre-negotiated contracts and encouraging partners to do the same.
- *Simplify existing contracts.* While much of the language is boilerplate, there is still a tendency to make things more complex than necessary. PSCs should receive lump sum payments for their non-work expenses saving all parties time and complications. In light of the great value that they bring to the organization, health insurance coverage should be arranged.
- *Increase the number of well-trained program managers.* For most of the first two years in Afghanistan, a single, talented officer oversaw the entire USAID

portfolio. The organization is lacking a sufficient core of people who know programming.

It is my feeling that USAID needs to be seen as a trusted organization that is making wise programming choices. The procurement process has a great influence on the fulfillment of its mission.

If USAID streamlines and enacts innovative changes to its procurement process, the relevance and impact of its work will increase, and will further highlight its position as a global leader.

Your larger Committee is addressing other larger issues of structural weaknesses in the way the US government prepares for post conflict reconstruction next week. CSIS' president, John Hamre, will be one of your witnesses and will bring forward some of the major recommendations we have been working on for the past few years. We hope that you will make real progress on the toughest issues: who is in charge of the overall reconstruction effort, if there is any standby funding, and how we shall achieve public safety in the aftermath of war.

Thank you.

Statement of

Dr. Allan V. Burman

President, Jefferson Solutions

A Division of the Jefferson Consulting Group, LLC

Washington, DC

On

USAID Contracting Policies

Before the

Subcommittee on International Economic Policy,

Export and Trade Promotion

Committee on Foreign Relations

United States Senate

February 25, 2004

Mr. Chairman and Members of the Committee, my name is Allan Burman and I am President of Jefferson Solutions, the government division of Jefferson Consulting Group, LLC. Solutions provides acquisition and change management consulting services to many Federal departments and agencies, including the Departments of Defense, Commerce, Energy, and Education as well as the Small Business Administration, the General Services Administration and the Internal Revenue Service. Much of our support includes assisting agencies in defining the outcomes they are seeking from private sector contracts and in developing performance measures and quality assurance plans for them to monitor and assess contractor performance.

We have also conducted management reviews of agency contracting operations, including those at HUD, Education, the Department of Veterans Affairs, the Energy Efficiency and Renewable Energy Office of the Department of Energy and in 2002 the headquarters acquisition and financial assistance operations of the United States Agency for International Development (USAID).

Prior to joining the Jefferson Group in 1994, I served as Administrator for Federal Procurement Policy in the Office of Management and Budget. I was Acting Administrator under President Reagan, confirmed by the Senate under President Bush and held on in that post under President Clinton. As Administrator I initiated numerous procurement reforms, including policies that favored the use of performance-based contracting for acquiring services and assessing a firm's past performance in determining its acceptability for future awards. The Committee has asked me to do the following:

- ❑ Reflect on the USAID contracting and procurement process,
- ❑ Address lessons learned from Afghanistan and Iraq,
- ❑ Discuss what oversight and accountability practices are in place regarding subcontracting, and,
- ❑ Provide specific recommendations for improving USAID procurement and contracting practices.

Let me preface my review of these areas with the comment that there are some elements that are fundamental to any sound acquisition system.

- ❑ Operations should be sufficiently transparent, and the bidding process understandable and regularized,
- ❑ The selection process should be fair and free from bias and conflicts of interest,
- ❑ Competition should be the norm, and
- ❑ Firms should be able to find out if they didn't win, why, and have some means for redressing grievances.

These are not very complicated requirements, but they are the sort of things I recommended when we worked with the Organization for Economic Cooperation and Development to help the emerging democracies of central and eastern Europe move from "state orders" to a market system. And they are the essence of the multi-thousand page Federal Acquisition Regulations of our own government. In many ways these are the

tests that should be applied to any contracting operation, whether by USAID in Iraq or the Small Business Administration in Washington, DC.

Coupled with these factors is the need for agencies to effectively define the results they seek from contractor support and to develop a contract management plan to see those results are achieved. And who is involved in carrying out that process is equally important to the success of any contracting effort. It is in this area that many agencies face challenges.

Effective oversight is even more critical today, when we see how much of agencies' mission accomplishment is dependent on contractor support. This need is particularly true of those agencies created in the last 30 years or so, including Energy, Education, EPA and NASA. Well over half of their funding and for Energy around 90 percent goes to contractor support. If the agency has not done a good job of defining its needs and desired results, then how can it expect to accomplish its mission? Where once there was an expectation that agency program and technical staff would perform the work, today their responsibility is in overseeing what is done. The question here is, are they skilled and trained in carrying out that management and oversight role? Do they even see that as their role? Are the program, technical and acquisition staff working in partnership to ensure contractors are focused on and achieve performance goals? These questions can be asked of USAID as well.

The USAID Contracting and Procurement Process

In 2002 Solutions conducted a review of USAID headquarters procurement functions, including the award and administration of grants and cooperative agreements. Key participants with me in the review included Craig Durkin, a Vice President with Solutions who recently directed the contracting and procurement operations of HUD and Steve Kelman, a Professor at Harvard's Kennedy School who succeeded me as Procurement Administrator. As part of this process we reviewed an array of files and documents, interviewed some 50 individuals and developed a number of conclusions about USAID operations as well as suggestions for improvement. While this effort preceded the war, I believe that many of our findings remain relevant today.

We found a staff of very dedicated, hardworking people and leadership that was looking to improve how they did business. We made a number of suggestions to help streamline and improve their acquisition process. These involved developing customer service standards, delegating some workload out of the procurement offices, and getting better technology to help them get their work accomplished. However, the key findings of our review reflected the general comment I noted above. That is, effective contracting requires a full partnership between procurement and originating office or program staff.

We tend to focus on the procurement office when we see contracts being poorly designed or run, but in fact originating program offices, those that are responsible for the efforts being funded, have a very key role to play in this process. As such, they should clearly be perceived and see themselves as part of the acquisition workforce of the agency.

However, only the Department of Defense tends to have this more expansive view of their acquisition workforce. Defense recognizes that engineers who define requirements or logisticians who support the effort or project managers who oversee contractor performance are all critical to the success of any acquisition and as such need to be well trained in these responsibilities. The General Accounting Office in October 2003 drafted an evaluation framework for improving the procurement function. They list partnering between program and procurement offices and providing adequate acquisition training to program and field office staff as critical success factors.

For USAID the originating offices have the responsibility to determine what is to be acquired or supported, are responsible for writing sound, results-oriented statements of work and monitor the contractor or recipient's performance. In our review, we suggested that originating officer acquisition roles be redefined to focus on performance and results and that the jobs of program personnel working on contract management be reoriented to reflect this new management emphasis. We also recommended that the procurement function be elevated and its Director placed on a par with other key USAID managers.

All too frequently critics focus on the award process and ignore the contract management aspects of the effort. It is appropriate to assess for both Afghanistan and Iraq who is monitoring contractor performance, whether they are trained to perform this role and what set of performance parameters have been established to see that work is being properly and effectively carried out.

While USAID has a limited number of contracting officers on site for their Iraq projects, their contractor oversight capability is severely limited. And as AID funds expand with contracts such as the \$680 million awarded to Bechtel National, Inc. in April 2003, this concern can only increase. USAID's Chief Procurement Counsel cites this Bechtel award as "the largest single direct contract awarded by USAID in its 42-year history," pointing out that it "is thought to be the largest single nonmilitary foreign aid contract to be awarded since the Marshall Plan that rebuilt Europe after World War II." So a good question for the Committee is, who's minding the store?

There is another element to this monitoring process as well. Given the huge increase in funds to acquire goods and services, what type of system is in place to keep track of what is being purchased and being brought into the country? Is there an effective property accountability system in place to monitor these buys and logisticians there to track them?

Lessons Learned

Some have raised questions about USAID's use of limited competition in acquiring contracted support, suggesting that full and open competition as defined in 1984's Competition in Contracting Act should be used in every case. However, both the Federal Acquisition Regulation and USAID's own regulations allow limited competition or even no competition in certain cases. Frankly, many agencies use the General Services Administration schedules program or let tasks against contracts that have already been

competed and awarded as ways to meet agency needs much more quickly than through a full and open competition process.

USAID refers to these multiple award contracts as IQC's or Indefinite Quantity Contracts. For example, in April 2003 it used an IQC in awarding a task order for the monitoring and evaluation of USAID/Iraq's technical assistance portfolio. All contractors are originally given a full and open chance to bid on these IQC awards. However, tasks are ultimately competed only among those who essentially become pre-qualified through the award of the IQC contract. Firms on these lists have already demonstrated an ability to meet the general requirement the agency has established. Given the exigencies and uncertainties early on regarding Iraq it is not unreasonable to take advantage of these provisions. That is not to say where rules are in place on how these types of procurements are to be conducted, it is acceptable to ignore them.

Contracting today practically demands a "best value" evaluation scheme, since agencies are looking for solutions to their problems and different firms bring different approaches for meeting their needs. Under virtually all circumstances, then, agencies will need to make judgments on which firm offers the best answer to the agencies problem. In many cases, teams of civil servants perform this evaluation role. This is the practice followed by USAID. Having that kind of selection process goes a long way to making sure that the process is fair and impartial.

Last year, I served as a member of a small Team of Independent Professionals to assist the Department of Energy in developing an acquisition strategy for acquiring contractor support. This requirement was to build fossil fuel plants in the Russian Federation. The Team learned that the Defense Threat Reduction Agency had recently undergone a full and open competition and as a result awarded contracts to five prime contractors each with multiple subcontractors. Part of the basis for winning an award was that each had experience in contracting overseas. The Team recommended that Energy employ the Economy Act to use this existing Defense Department multiple award vehicle and compete the requirement among the five awardees as opposed to initiating a new full and open competition. The selection process was quick and effective, and getting these fossil fuel plants built will allow the Russians to shut down three Chernobyl style plutonium reactors in Siberia that much sooner.

Clearly as both the Department of Defense and USAID have gotten a better understanding of requirements and agency roles and missions, the options to broaden competition increase. It is easy in hindsight to say that all of these responsibilities should have been carefully laid out in advance but that is not a very practical suggestion.

Another question for the Committee is who is preparing the statements of work for these services. I can envisage many problems where work statements are poorly laid out and contracting staff will reject them. Is there someone helping to make this part of the process more effective? And is anyone developing performance metrics to be placed in these awards and ways to measure whether the contractor is accomplishing them? A major reason for moving toward performance-based contracts is to shift risk from the

government to the contractor and also to get both parties to focus on business outcomes, while offering the contractor an opportunity to innovate in accomplishing the mission. Of course, security concerns and other uncertainties in Afghanistan and Iraq make it much more difficult for companies to sign up to fixed price performance-based awards. But that does not mean that acquisition strategies, risk mitigation plans and business outcomes should not still be important elements in defining what the government is looking to acquire.

Subcontractor Management

In the case of the large Bechtel contract for all types of infrastructure projects cited above, USAID has made it clear that it is relying on the prime contractor for all aspects of subcontractor management. However there are clauses that flow down to the subcontractor that for example would allow USAID to inspect subcontractor work or to review their incurred costs. Other clauses that apply to the prime also frequently flow down, such as Organizational Conflict of Interest provisions or requirements to use US Flag Carriers.

Generally, however, the government seeks to maintain privity of contract with the prime contractor, since the prime bears ultimate responsibility for all the work performed on the contract. The more that the government interferes in that relationship between the prime and the subcontractor, the more it opens itself to charges that it and not the prime contractor should be held accountable for a subcontractor's failure to perform.

On the other hand, USAID can in its contract specify subcontracting targets as, for example, the proportion of work to be conducted by small or disadvantaged businesses. Moreover, it can place clear incentives and disincentives in the contract to align the contractor's efforts with the agency's goals. While agencies may require percentages of work to be done by small businesses, my experience is that they frequently fail to monitor the prime's performance in this regard. Rather than micromanaging the prime contractor, an alternative approach would be for USAID to develop performance-based requirements along these lines to see that its subcontracting goals are accomplished.

Recommendations for Improving USAID Contracting

In summary, I would propose the following as specific recommendations for improving USAID contracting operations:

- ❑ Ensure the procurement and originating offices work in close partnership in developing statements of work and in carrying out and monitoring procurements,
- ❑ Continue to use IQC's as appropriate for awarding Iraq contracts while using every effort to see that competition exists on every procurement,
- ❑ Be as open as possible on the procedures to be followed on bidding for USAID work and develop regularized procedures for all types of contracting actions,

- ❑ Ensure that an adequate number of Cognizant Technical Officers are available to oversee contractor performance and see that they are sufficiently trained to carry out these important contract oversight activities,
- ❑ Establish a property accounting system that focuses on all the goods being purchased and brought into the country,
- ❑ Use performance-based methods as well as incentives to focus the contractor on both business outcomes as well as on subcontractor management, and
- ❑ Develop an effective reporting and documentation system for monitoring contract performance.

As needs become clearer and the process for prioritizing those needs more established, then it is also critical to lay out a long range acquisition plan so that all parties can be thinking through in advance the best way to meet these needs and how to allocate the limited resources available for these purposes. Finally, seeing that USAID has adequate resources and trained staff to put in place these recommendations is essential to creating the effective acquisition process that the Committee and the Administration is seeking.

Mr. Chairman, this concludes my prepared remarks. I would be pleased to answer any questions you or other members of the Committee might have.

February 24, 2003

Senator Chuck Hagel
United States Senate
Committee On Foreign Relations
Subcommittee Chairman
International Economic Policy,
Export and Trade Promotion
Washington, D.C. 20510-6225

Dear Senator Hagel:

Good afternoon and thank you for inviting me to discuss issues related to USAID contracting policies and operations. As a former Senior Procurement Executive for USAID I believe, I have some relevant knowledge of the Agency's inter-workings and I hope I can contribute input that will help generate improvements.

First and foremost I would like to state that I fully support the procurement professional staff both in Washington, DC and in the overseas missions. I worked with them for 21 years up until July of 2001. These people are unsung heroes in USAID accomplishments. They are often overworked and under-staffed, yet they do their best to deliver. It was my experience that their ethics are beyond reproach. I believe when it concerns USAID that any rumors about contracts being "steered" are just that, with no substance. In my entire career with USAID spanning both Republican and Democratic administrations I was never once directed nor was it suggested that I sign a contract I was not comfortable with in terms of that the award would otherwise have been improper.

The preceding being stated, I do have concerns about the present state of affairs and about USAID's ability to effectively award, administer and monitor contracts of the magnitude associated with Iraq and Afghanistan, in addition to the "normal" annual workload. What concerns me is again, the lack of adequate staff as well as the lack of expertise in construction type contracting. Capital development/construction type contracts have not been the forte of USAID contracting professionals for a number of years and the staff hired from the 1990's to present, to

the best of my knowledge, do not have those skill sets. When one combines a staff shortage with that of lacking skills, it points towards vulnerability. Again, the procurement professionals will do their best to deliver but when one is overworked and lacking the necessary skills, it sets the groundwork for potential mistakes. Had I been the Procurement Executive at the time the Office of Procurement was tasked with negotiating and entering these contracts, I seriously believe I may very well have advised the Agency senior management that perhaps DOD would have been a better alternative given their staffing and infrastructure in this area. I remain in contact with many USAID staff members as well as with the contractor community and the aforementioned comments are reflective of some of the feedback I have received.

The USAID procurement system has been studied and reviewed numerous times for the last 20 years and the findings are redundant. The agency is understaffed in terms of contracting officers and specialists, there is a serious lack of procurement planning, training for cognizant technical officers is not sufficient and budget allocation and distribution is extremely slow in channeling funds to operating units.

In the 1990s we did a comparison of the average workload of a USAID contract specialist versus their peers at agencies like DOE, Department of Agriculture, HHS and others and we discovered that the USAID specialist had 2 to 4 times the workload of those at the other agencies. I would expect the situation is worse now than it was then.

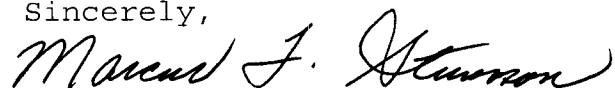
In the late 1980's, there was a comprehensive review of USAID led by OMB and the resultant report was known as the "OMB Swat Team Report". During the 1990's that report was used as a guide in addressing a number of enhancements and reforms. This included a decision to hire approximately 45 additional contract specialists that brought the Office of Procurement to its highest strength ever, of approximately 175 personnel. Additionally, during this same period, actions, statements and attitudes of the Agency senior management made it clear agency-wide that: (1) the procurement life cycle encompasses all offices of the agency; (2) that successful procurement requires highly qualified and well trained Contracting Officers (COs), Cognizant Technical Officers (CTOs), and Heads of Contract Activities (HCAs); and (3) that successful procurement

systems and practices are critical to achieving the results of the Agency. This powerful combination of relatively simple fixes caused morale in the Office of Procurement to reach a peak. Supervisors had sufficient staff to get the job done and support functions such as evaluations of operating units overseas and the audit function were operating efficiently and had the support of Agency senior management and buy-in from the technical offices on the importance of understanding their role in the procurement function.

Unfortunately, in my opinion, the situation since then has seriously eroded. The current permanent staffing level in the Office of Procurement is only approximately 120 personnel yet with the addition of contracting for Iraq and Afghanistan along with special programs like the AIDS Initiative, the workload has increased dramatically. Again, these type situations create the potential for vulnerabilities, not to mention stress and overworked procurement professionals. I do not believe it to be sustainable.

In looking at the future I think a decision should be made to "staff up" the Agency's procurement function across the Agency - but most immediately within the Office of Procurement--at a level that allows efficiency and accuracy. By "staff up" I mean recruit and employ bonafide and qualified GS and FS contract specialists for the long term and not utilize a patchwork of personal service contractors and temporary use of overseas foreign service nationals on a continual ad-hoc basis. The procurement function is vital to USAID, perhaps more so than many within the Agency realize. If USAID achieves a reasonably staffed and trained procurement function and sustains it, they will be in a better position to deal with "surges" like those they currently face and they will have professionals who are better trained for the type contracts they are being asked to put in place. Also, support functions like policy, evaluation and audit would be in a position to better support the operations staff.

Sincerely,

A handwritten signature in dark ink, appearing to read "Marcus L. Stevenson". The signature is fluid and cursive, with a large, stylized initial 'M'.

Marcus L. Stevenson